

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.154/2008

1. SHRI. PAIK CUIRO VELIP
son of late Cuiro Velip major,
married, Agriculturist, resident
of H.No.101, Morpilla-Quepem,
Post Fatorpa and his wife;

2. SMT. PARVATI PAIK VELIP
major, housewife, resident of H.No.101,
Morpilla-Quepem, Post Fatorpa.

...APPELLANTS

Versus

1. THE GOVERNMENT OF GOA
through its Chief Secretary, having
Office at the Secretariat Panaji,
Panaji, Tiswadi, Goa.

2. THE CONSERVATOR OF FOREST
Government of Goa, Office of the
Conservator of Forest, Forest Department,
having Office at Junta House, 18th June
road, Panaji, Panaji, (Tiswadi) Goa.

3. THE DY. CONSERVATOR OF FOREST
Cashew Division, Ponda-Goa.

4. THE RANGE FOREST OFFICER
Cashew Division, Canacona-Goa.

5. SHRI. BHISSO GANESH GAONKAR
age 72 years, son of Ganesh Shaba Gaonkar,
since deceased through LR's Resp.No.6(a) to
6(p) and his wife,

6. SMT. SARASWATI BHISSO

GAONKAR, age 65 years, wife of Bhisso
Gaonkar, Since deceased represented
through L.R's

a) SHRI. FONDU BHISO GAUNKAR
of major age, and his wife;

b) SMT. GANGOVATI BHISO
GAUNKAR, of major age, both residing at
H.No.101, Bagvada, Morpilla, Quepem,
Goa.

c) SMT. KHUSHALI BHISO GAUNKAR
of major age

d) SMT. RADHIKA BHISO GAUNKAR
of major age, both residing at H.No.101,
Bagvada, Morpilla, Quepem, Goa.

e) SHRI. ARJUN BHISO GAUNKAR
of major age and his wife;

f) SMT. ARCHANA ARJUN GAUNKAR
of major age, both residing at H.No.101,
Bagvada, Morpilla, Quepem, Goa.

g) SHRI. PARTO BHISO GAUNKAR
of major age and his wife;

h) SMT. PRAMILA PAVLO GAUNKAR
of major age, both residing at H.No.101,
Bagvada, Morpilla, Quepem, Goa.

I) SHRI. BABUSO BHISO GAUNKAR
of major age and his wife;

j) SMT. BABITA BHISO GAUNKAR
of major age, both residing at H.No.101,

Bagvada, Morpilla, Quepem, Goa.

k) SHRI. PANGLO JANU VELIP
of major age and his wife;

l) SMT. YESU PANGLO VELIP
of major age, both residing at
Morpilla, Quepem-Goa.

m) SHRI. TOLU VELIP
of major age, and his wife;

n) SMT. BHAGE TOLU VELIP
of major age, both residing at
Shilli-Baishe, Quepem-Goa.

o) MR. VISHNU VITHOBA VELIP
of major age, and his wife;

p) MRS. TULSHI VISHNU VELIP
of major age, both residing at
Adne-Balli, Quepem-Goa.

7. SHRI. SHAMBU GANESH GAONKAR
age 69 years, son of Ganesh Gaonkar.

8. SHRI. DHOLO GANESH GAONKAR
age 67 years, son of Ganesh Gaonkar
Since deceased represented through L. R's

a) SHRI. PRAKASH DHOLO GAONKAR
son of late Dholo Gaonkar, major, married,
agriculturist and his wife;

b) SMT. PRATIKSHA PRAKASH
GAONKAR, major, married, housewife.

c) SHRI. PRABHAKAR DHOLO
GAONKAR, son of late Dholo Gaonkar,

major, married, agriculturist and his wife;

d) SMT. PARVATI PRABHAKAR
GAONKAR, major, married, housewife,
resident of Morpilla, Quepem-Goa.

9. SMT. SATYAWATI DHOLO
GAONKAR, age 60 years, wife of Dholo
Gaonkar

10. SHRI. FONDU GANESH GAONKAR
age 65 years, son of Ganesh Gaonkar

All residing at H.No.144, Canibaga,
Morpilla, Fatorpa, Quepem-Goa.

11. SMT. CHANDRABAGI FONDU
GAONKAR, age 59 years, wife of Fondu
Gaonkar

12. SHRI. SONU GAONKAR
age 45 years, son of Shaba Gaonkar

13. SMT. JAYAWANTI SONU GAONKAR,
age 43 years, wife of Sonu Gaonkar both
residents of H. No.144, Canibaga, Morpilla,
Fatorpa, Quepem-Goa.

14. SHRI. KUST PURSO GAONKAR
age 70 years, son of Purso Gaonkar
Since deceased represented through L.R's

a) SHRI. KATU KUSTA GAONKAR
and his wife;

b) SMT. KUSHAVATI KATU GAONKAR

c) SHRI. GOPAL KUSTA GAONKAR

d) SHRI. DEELIP KUSTA GAONKAR

e) SHRI. NARAYAN KUSTA GAONKAR

and his wife;

f) SMT. SHOBHAVATI NARAYAN
GAONKAR

g) SHRI. CHANDRU KUSTA GAONKAR
All residents of Voilovado Morpila

15. (deleted from cause title)

16. SHRI. PURSO PAIK GAONKAR
age 30 years, son of Paik Gaonkar
All resident of H.No.144 Canibaga,
Morpilla, Fatrorpa, Quepem-Goa.

17. GOA FOREST DEVELOPMENT
CORPORATION LTD.
represented by its Managing Director,
having Office at Ponda-Goa.

...Respondents/
Original Defendants
No.1 to 17

18. SMT. TOLIYE CUSTA GAONKAR
deceased;

19. SHRI. CUSTA GAONKAR
deceased; Represented through L. R's

a) SHRI. ARJUN C. GAONKAR
son of Smt. Toliye and Shri. Custa
Gaonkar, age 40 years, and his wife;

b) SMT. DRAUPADI A. GAONKAR
wife of Arjun C. Gaonkar, age 28
years, both residing at H.No.659,
Barcem-Taluka, Quepem, Post Padi-Goa.

c) SMT. CHANDRAWATI PANGLO
VELIP, alias Khejv Custa Gaonkar, wife of
Panglo V. Velip, age 49 years.

d) SHRI. PANGLO V. VELIP
son of Voddo Velip, age 65 years,

both residing at H.No.365,
Matremoll, Khola, Canacona-Goa.

20. SHRI. BOMBO CHONDRU VELIP
son of late Chondru Bombo Velip,
major, married, agriculturist and his wife;

...Respondents/
Original Plaintiffs
No.1 to 2(d)

21. SMT. DRAUPADI BOMBO VELIP
major, housewife, both residents of
H.No.102, Village Morpila, Taluka
Quepem, Post: Fatorpa, Goa.

22. SHRI. ZORGO CHONDRU VELIP
son of late Chondru Bombo Velip,
major, married, agriculturist and his wife;

23. SMT. LAXMI ZORGO VELIP
major, housewife, both residents
of H.No.102, Village Morpila,
Taluka Quepem, Post: Fatorpa, Goa.

24. SHRI. PAIK VITHOBA VELIP
son of late Vithoba Bhoiro Velip,
major, married, agriculturist and his wife;

25. SMT. RADHIKA PAIK VELIP
major, housewife, both residents
of H.No.91, Village Morpila,
Taluka Quepem, Post: Fatorpa, Goa.

26. (deleted from cause title)

27. SHRI. NARAYAN ZORGO VELIP
major, married, agriculturist and his wife;

28. SMT. LAXMI NARAYAN VELIP
major, housewife

29. SHRI. BHOIRO ZORGO VELIP, son of
late Zorgo Bhoiro Velip, major, married,
agriculturist and his wife;

30. SMT. CHANDRAVATI BHOIRO
VELIP, major, housewife

31. SHRI. BABUSO ZORGO VELIP
son of late Zorgo Bhoiro Velip,
major, married, agriculturist and his wife;

32. SMT. KASHI BABUSO VELIP
major, housewife

33. SHRI. LAXMAN ZORGO VELIP
son of late Zorgo Bhoiro Velip,
major, married, agriculturist and his wife;

34. SMT. LAKSHAVATI LAXMAN
VELIP, major, housewife

35. SHRI. GANESH ZORGO VELIP
son of late Zorgo Bhoiro Velip,
major, married, agriculturist and his wife;

36. SMT. GANGAVATI GANESH VELIP
major, housewife

37. SHRI. SONU ZORGO VELIP
son of late Zorgo Bhoiro Velip,
major, married, agriculturist and his wife;

38. SMT. SHEVANTI SONU VELIP
major, housewife

All residing at H.No.92, Village Morpila,
Taluka Quepem, Post Fatorpa.

39. SHRI. SOPTU CHONDRU VELIP, son
of late Chondru Soptu Velip, major, married,
agriculturist and his wife;

40. SMT. SARASWATI SOPTU VELIP
Since deceased represented through L.R's

a) SHRI. ANIL SOPTU VELIP

son of Soptu Chondru Velip,
major, married, and his wife;

b) SMT. ASHWINI ANIL VELIP

major, married, housewife, both
residents of Morpila, Quepem.

c) SMT. DEEPAKA DHORMU VELIP

daughter of Soptu Chondru Velip,
major, married and her husband;

d) SHRI. DHORMU BHIKAJI VELIP

major, married, both residents of
Villiam, Khola, Taluka-Canacona, Goa.

e) KUM. MAGHAN SOPTU VELIP

daughter of Soptu Chondru Velip,
major, household work, resident
of Morpila, Taluka-Quepem, Goa.

41. SHRI. CHIMOT CHONDRU VELIP

son of late Chondru Soptu Velip,
major, married, agriculturist and his wife;

42. SMT. TULJAVATI CHIMOT VELIP

major, housewife

43. SHRI. RAM CHONDRU VELIP

son of late Chondru Soptu Velip,
major, married, agriculturist and his wife;

44. SMT. SITA RAM VELIP

major, housewife

45. SHRI. NILU CHONDRU VELIP

son of late Chondru Soptu Velip,
major, married, agriculturist and his wife;

46. SMT. NIRAPPA NILU VELIP

major, housewife

All residing at H.No.93, Village Morpila,
Taluka Quepem, Post: Fatorpa.

47. SHRI. KATU SHABA VELIP

son of late Shaba Janu Velip,
major, agriculturist

48. SHRI. JANU SHABA VELIP

son of late Shaba Janu Velip,
major, agriculturist.

49. SHRI. SHAMBU SHABA VELIP

son of late Shaba Janu Velip, major,
married, agriculturist and his wife;

50. SMT. BHAGIRATHI SHAMBA VELIP

major, housewife

51. SMT. MOG FONDU VELIP

widow of late Fondu Shaba
Velip, major, housewife

All residing at H.No.94, Village Morpila,
Taluka Quepem, Post: Fatorpa, Goa.

52. SHRI. JIVA CUSTA VELIP

Since deceased represented through L. R's

a) SHRI. SANCLU JIVA VELIP

b) SHRI. SUDARSHAN JIVA VELIP

both minors represented by their mother
and natural guardian, the Respondent No.53
abovenamed.

53. SMT. SAGUN JIVA VELIP

wife of late Jiva Custa Velip,

major, housewife, both residents
of H.No.88, Village Morpila,
Taluka Quepem, Post: Fatorpa.

54. SHRI JANU CUSTA VELIP
son of late Custa Sanclu Velip,
major, married, agriculturist
and his wife;

55. SMT. GOPIKA JANU VELIP
major, housewife, both residing
at H.No.88, Village Morpila,
Taluka Quepem, Post: Fatorpa.

56. SMT. POMU NARAYAN GAONKAR
wife of Narayan Paik Gaonkar, daughter
of late Custa Sanclu Velip, major,
housewife, residents of H.No.184,
Village Dabem Morpila, of Quepem
Taluka, Post: Fatorpa-Goa.

57. SHRI. NARAYAN PAIK GAONKAR
Since deceased represented through L. R's

a) SHRI. CHANDRU NARAYAN
GAONKAR, son of late Narayan Gaonkar
and his wife;

b) SMT. MOG CHANDRU GAONKAR

c) SMT. KUSHALI NARAYAN
GAONKAR, son of late Narayan Gaonkar,
major, bachelor

d) SMT. SAGUN SOPTU VELIP
daughter of late Narayan Gaonkar,
major, housewife and her husband;

e) SHRI. SOPTU VELIP
major, married, agriculturist

both residing at Govol, Kabde-Ram,
Canacona-Goa.

f) SMT. KESAR DHARMA VELIP
daughter of late Narayan Gaonkar, major,
married, housewife and her husband;

g) SHRI. DHARMU BHUTO VELIP
major, married, agriculturist, both
resident of Morpila, Quepem-Goa.

58. SHRI. ZORGO GOVIND GAONKAR
son-in-law of late Custa Santu Velip,
Since deceased represented through L. R's

a) SHRI. BHISSO ZORGO GAUNKAR
son of late Zorgo Gaunkar, major,
married and his wife;

b) SMT. MAYAVATI BHISSO GAUNKAR
major, both residing at H.No.203, Kajumol
Kanibag, Morpila, Taluka-Quepem, Post:
Fatorpa, Goa.

c) SHRI. SANKLU ZORGO GAUNKAR,
son of late Zorgo Gaunkar, major and his
wife;

d) SMT. PUNI SANKLU GAUNKAR
major, both residing at H.No.203,
Kajumol-Kanibag, Morpila, Taluka
Quepem, Post: Fatorpa, Goa.

e) SHRI. GANESH ZORGO GAUNKAR
son of late Zorgo Gaunkar, major
and his wife;

f) SMT. LAXMI GANESH GAUNKAR
major, both residing at H.No.203,
Kajumol-Kanibag, Morpila, Taluka

Quepem, Post: Fatorpa, Goa.

59. SHRI. GANESH SOPTU VELIP
son of late Soptu Ganesh Velip,
major, married, agriculturist
and his wife;

60. SMT. KASHI GANESH VELIP
major, housewife, both residents
of H.No.95, Village Morpila,
Taluka Quepem, Post: Fatorpa, Goa.

61. SHRI PUNO SOPTU VELIP
son of late Soptu Ganesh Velip,
major, married, agriculturist
and his wife;

62. SMT. RADHA PUNO VELIP
major, housewife, both residents
of H.No.95, Village Morpila,
Taluka Quepem, Post: Fatorpa, Goa.

63. SHRI. SONU BHIVAM VELIP
son of late Bhivam Sonu Velip,
major, married, agriculturist
and his wife;

64. SMT. SATU SONU VELIP
major, housewife, both residents
of H.No.103, Village Morpila,
Taluka Quepem, Post: Fatorpa, Goa.

65. SHRI. KANTU SHABA VELIP
major, married, agriculturist and his son;

66. SHRI. SHABA KANTU VELIP
major, both residents of H.No.94,
Village Morpila, Taluka-Quepem,
Post: Fatorpa, Goa.

67. SMT. MALCUM DUDU VELIP
widow of late Dudu Fondu Velip,
since deceased through L.R's

a) Smt. Laxmi Ganesh Gaonkar,
daughter of deceased Respondent No.67,
major, married and her husband;

b) Shri Ganesh Zorgo Gaonkar,
major, married,

Both residents of Caju Vaddo,
Morpilla, Quepem, Goa.

68. SHRI. PORO FONDU VELIP
son of late Fondu Dudu Velip,
major, married, agriculturist
and his wife;

69. SMT. KAMLAVATI PORO VELIP
major, housewife, both residents of
H.No.103, Village Morpila, Taluka
Quepem, Post: Fatorpa.

....Respondents/
Original Plaintiffs
No.5 to 54

Mr. Sudesh Usgaonkar with Ms. Marie Rosette Pereira, Advocates
for the Appellants.

Ms. S. Kamat, Additional Government Advocate *for Respondents
No.1 to 4.*

Mr. I. Santimano, Advocate *for Respondents No.5 to 9.*

CORAM: M. S. SONAK, J.

DATED: 2nd September 2021

ORAL JUDGMENT:

1. Heard Ms. R. Pereira for the Appellants, Ms. S. Kamat
for Respondents No.1 to 4 and Mr. I. Santimano for Respondents
No.5 to 9.

2. The challenge in this appeal is to the Judgment and Decree dated 30.10.2006 made by the Ad-hoc District Judge (2) Fast Track-II, South Goa at Margao dismissing Civil Suit No.129/2004/II as also the counter claim raised by and on behalf of respondents no.5 to 9 therein.

3. The appellants, who are the original plaintiffs in the said Suit have instituted this appeal aggrieved by the dismissal of their Suit. First Appeal No.75/2008 was instituted by respondents no.5 to 9 and others, aggrieved by the dismissal of their Counter Claim in the said Suit.

4. By Judgment and Order dated 29.09.2014, First Appeal No.75/2008 was disposed of by making the following order:

“Heard Mr. Redkar, learned Counsel appearing on behalf of the appellants and Ms. Kholkar, learned Additional Government Advocate appearing on behalf of respondents no. 1 to 5.

2. By the above appeal, the appellants have challenged the judgment, order and decree dated 30/10/2006 passed by the Adhoc District Judge (2), FTC-II, Margao in Civil Suit No. 129/2004/II (New): Special Civil SuitNo. 76/77 (Old).

3. The said suit was *inter alia* for declaration that the suit portion is part and parcel of the plaintiffs' ancestral property. It is reported that the respondent no.57 of the appeal i.e. the defendant no. 52 had already died during the pendency of the said suit i.e. on 26/03/2006 and no legal representative of the deceased defendant no. 52 were brought on record.

4. The appellants have filed Miscellaneous Civil Application No.676/2011 for setting aside abatement in respect of deceased respondent no. 57 and for bringing on record of the Appeal the legal representatives of deceased respondent no.57. However, since the respondent no.57 had not died during the pendency of the appeal, question of merely setting aside abatement of the appeal as against him and bringing his legal representatives on record, in the Appeal will not be sufficient. The respondent no.57 of the Appeal was the defendant no. 52 in the said Civil Suit No. 129/2004/11 and had died during the pendency of the suit due to which the suit had abated as against the defendant no.52 and being a suit for declaration, it had abated as a whole. Thus, it becomes necessary that abatement as against deceased defendant no.52 should be set aside and the legal representatives of deceased defendant no. 52 are brought on record. Admittedly, the defendant no. 52 has legal representatives.

5. In view of the judgment dated 02/11/2012 passed by this Court in Writ Petition Nos. 785 and 782 of 2011 which squarely applies to the present case, the impugned judgment and order is bound to be

quashed and set aside since the suit had abated as against the defendant no.52, with liberty to the appellants to file appropriate applications before the trial Court for setting aside abatement, bringing legal representatives of deceased defendant no. 52 on record and for condonation of delay, if any,etc.

6. The appellants, in Stamp Number (Appln) No. 2345/2014 have prayed for setting aside the impugned judgment and to remand the case to the trial Court for fresh consideration.

7. In view of the above, following order is made:

(a) Impugned Judgment, order and decree dated 30/10/2006 passed by the Adhoc District Judge (2), FTC-II, Margao in Civil Suit No. 129/2004/II (New): Special Civil Suit No. 76/77 (Old) is quashed ad set aside.

(b) Liberty is granted to the appellants to file appropriate applications before the trial Court as observed above. If such applications are filed, the same shall be dealt with in accordance with law.

8. Appeal and Stamp Number (Appln.) No. 2345/2014 stand disposed of accordingly.”

5. Ms. Pereira points out that in terms of the aforesaid Judgment and Order dated 29.09.2014, the Judgment and Order dated 30.10.2006 which has been impugned in the present appeal has already been set aside and the matter has been remanded. She

submits that there will now be a possibility of conflicting decrees if, this appeal is decided one way or the other. She submits that in such circumstances it is only appropriate that even this appeal is allowed and the matter is remanded so that on remand, the entire Suit can be decided afresh by the learned Trial Judge.

6. According to me, the contention raised by Ms. Pereira deserves to be accepted, as otherwise, there might be a possibility of conflicting decrees. Besides, on perusal of the impugned Judgment and Decree I am satisfied that there was no proper consideration of the respective positions of the plaintiffs as well as the defendants, including the Government of Goa. The learned Trial Judge should have considered the oral and documentary evidence placed on record by the parties and thereafter, proceeded to dispose of the Suit one way or the other.

7. For the aforesaid reasons, even in this appeal, the impugned Judgment and Decree is set aside and matter is remanded to the learned Trial Judge for disposal of the Suit, based on the evidence already lead, afresh. This means that the Trial Court will have to comply with the directions in Judgment and Order dated 29.09.2014 in First Appeal No.75/2008 and also, hear the parties afresh based on the oral and documentary evidence already

produced and dispose of the Suit and the Counter Claim therein accordingly.

8. The learned counsel for the appellant points out that in pursuance to the remand ordered by Judgment and Order dated 29.09.2014 , the appellants have not received any notice. If that be so, then, the learned Trial Judge to look into this grievance and if necessary issue a fresh notice so that the Suit and the Counter Claim are disposed of.

9. The appeal is allowed in the aforesaid terms. There shall be no order as to costs.

10. The parties, to now appear before the Trial Judge on 04.10.2021 at 10.00 a.m. and file the certified copy of this Judgment and Decree. Learned Trial Judge to consider issuing fresh notices to the parties who may not appear before it on the said date.

M. S. SONAK, J.